

APPEAL NO. 023218
FILED FEBRUARY 3, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 19, 2002. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the first quarter. The appellant (self-insured) appealed, and the claimant responded.

DECISION

The hearing officer's decision is affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in dispute is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the first quarter. The claimant contended that he had no ability to work during the qualifying period as a result of his impairment from his compensable injury. It is undisputed that the claimant did not work or look for work during the qualifying period. Rule 130.102(d) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work.

The hearing officer determined that there were narrative reports which specifically explained how the claimant's compensable injury caused his inability to work during the qualifying period, that no other records showed that the claimant was able to return to work during the qualifying period, and that the claimant was unable to work in any capacity during the qualifying period. The hearing officer further found that the claimant met the good faith criterion for SIBs during the qualifying period and concluded that the claimant is entitled to SIBs for the first quarter. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We have stated that whether another record shows an ability to work is a question of fact for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 000625, decided May 11, 2000. In determining whether the claimant had an ability to work during the qualifying period, the hearing officer could consider the treating doctor's opinion expressed in a medical report regarding the effects of the prescribed medications the claimant takes for his chronic pain that resulted from his compensable injury. Texas Workers' Compensation Commission Appeal No. 002091, decided October 23, 2000. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against

the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**CITY SECRETARY
(ADDRESS)
(CITY) TEXAS (ZIP CODE).**

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Terri Kay Oliver
Appeals Judge